

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

STATE OF MISSOURI, *ex rel.* JEREMIAH W.
(JAY) NIXON, ATTORNEY GENERAL)

Plaintiff,)

vs.)

HOLIDAY MANAGEMENT GROUP, INC.,)
d/b/a Holiday Orlando Reservations)
Serve: Richard F. Johnson, Registered Agent)
683 Tuscora Drive)
Winter Springs, Florida 32708)

Defendant.)

CIVIL NO. _____

COMPLAINT FOR INJUNCTIVE
AND ADDITIONAL RELIEF

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

COMES NOW Plaintiff, STATE OF MISSOURI, by JEREMIAH W. (JAY) NIXON, Attorney General, and brings this action pursuant to the Telephone Consumer Protection Act, 47 U.S.C. §227, *et seq.* ("TCPA"), complaining of Defendant Holiday Management Group, Inc., a Florida corporation not authorized to transact business in Missouri as a foreign corporation, d/b/a Holiday Orlando Reservations (collectively "Holiday") violation of the TCPA in connection with the sending of unsolicited advertisements via telephone facsimile machines. Plaintiff seeks a permanent injunction, penalties, and other relief, based upon Defendant's violation of the TCPA.

PARTIES

1. Plaintiff, by and through its attorney, Jeremiah W. (Jay) Nixon, Attorney General, is authorized by 47 U.S.C. §227(f)(1) to file actions in federal district court to enjoin violations of and enforce compliance with the TCPA on behalf of residents of the State of Missouri and to obtain actual damages or damages of \$500 for each violation and up to treble that amount for each violation committed willfully or knowingly.

2. Defendant, Holiday, is a Florida corporation, the registered agent of which is Richard F. Johnson, 683 Tuscora Drive, Winter Springs, Florida 32708. Defendant has never registered, with

the Office of the Missouri Secretary of State, as a foreign corporation to transact business in the state of Missouri. Holiday is registered in Florida as Seller of Travel #31748.

3. For purposes of this Complaint, any references to the acts and practices of Defendant shall mean that such acts and practices are by and through the acts of Defendant's owners, officers, directors, employees, partners, or other agents.

JURISDICTION AND VENUE

4. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1337(a) and 47 U.S.C. §227(f)(1) and supplemental jurisdiction over the state claims pursuant to 28 U.S.C. §1367.

5. Venue in this matter is proper in this judicial district pursuant to 28 U.S.C. §1391(b), in that a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. Venue is also proper in this judicial district pursuant to 47 U.S.C. §227(f)(4), in that Defendant transacts business in this district and the violations of the TCPA are occurring in this district.

DEFENDANTS' BUSINESS PRACTICES

6. Upon information and belief, sometime after December 1999, but at a date certain known to Defendant, Defendant entered into an agreement with Fax.com to utilize Fax.com's broadcast faxing services, which includes the "industry's largest fax number database."

7. Upon information and belief, Defendant purchased from Fax.com both Fax.com's services to physically transmit fax advertisements on Defendant's behalf and the use of Fax.com's database of fax numbers.

8. Fax.com uses a telephone facsimile machine, computer, or other device to transmit advertisements to telephone facsimile machines in and around the Kansas City, Missouri, area among others. Attached as Exhibit A is an example of an advertisement faxed by Fax.com on behalf of Defendant, which advertises the commercial availability of discount vacation packages.

9. Neither Fax.com nor Defendant have received the express invitation or permission of persons to whom copies of advertisements are faxed and do not have a prior business relationship with those persons.

10. Upon information and belief, at the time Exhibit A was transmitted, Defendant knew that the fax advertisements would be sent to owners of fax numbers that had never given express consent to receive advertisements from Defendant and did not have a pre-existing business relationship with Defendant.

11. In entering into a business relationship with Fax.com to send advertisements such as Exhibit A, Defendant took affirmative action to knowingly and/or willfully violate the TCPA.

12. Upon information and belief, these unsolicited faxes originate from the State of California specifically from a number that is assigned to Fax.com and are relayed interstate to persons within Missouri. The fax solicitations contain a telephone number ostensibly provided to enable a recipient to call to be removed from the list of telephone numbers to which the solicitations are sent. This telephone number, 1-800-785-8505, and others that are also used, belong to Fax.com.

13. The sending of these unsolicited advertisements to facsimile machines causes the recipients to pay for the paper and toner used by the facsimile machines receiving these advertisements. Those facsimile machines and those supplies would otherwise have been used to receive requested messages. In addition, receiving these unsolicited advertisements prevents other requested messages from being received and requires additional labor to attempt to distribute the unsolicited advertisements. Moreover, Defendant's unsolicited faxes are bothersome and a harrassment to recipients.

VIOLATIONS

14. Paragraphs 1 through 13 are herein incorporated by reference.

15. Defendant has violated the TCPA, 47 U.S.C. 227(b)(1)(C), and 47 C.F.R. 64.1200(a)(3), by engaging in a pattern or practice of sending unsolicited faxes, via facsimile machine, computer, or other device to facsimile machines located in Missouri.

16. Defendant's violations are willful and knowing.

REMEDIES

17. The TCPA empowers this Court to grant to Plaintiff, on behalf of the residents of Missouri, injunctive and other relief, and to award actual monetary losses or \$500 in damages for each violation, or to grant both. Furthermore, if this Court finds that a defendant willfully or knowingly violated the TCPA or regulations promulgated pursuant to the TCPA, the Court may, in its discretion, increase the monetary award by up to three times the amount. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injuries caused by Defendant's unlawful activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this honorable Court:

- A. Permanently enjoin Defendant from violating the TCPA;
- B. Award such relief as the Court deems necessary to redress consumers resulting from Defendant's violations of the TCPA, including recovery of actual monetary loss by Missouri consumers, civil penalties of \$500 per violation, and find that Defendant's actions were willful and knowing sufficiently to justify an award equal to three times the amount of civil penalties, pursuant to 47 U.S.C. §227;
- C. Assess to Defendant all Court costs and costs of investigation and prosecution incurred by Plaintiff, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

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